over many years and use systems that, although they were the most advanced technology available when installed, are not the most modern technology available today. Therefore, CLECs that intend to use the ILEC network, rather than building their own facilities, must make due with the same systems that ILECs currently use to serve their own customers. Although customers would experience some increase in service quality if new systems were installed each time an improved technology became available, the costs of such an undertaking would be enormous.

The following statements quoted by the Petitioners perhaps best illustrate their confusion over the nondiscrimination standard:

> "By relying upon manual interventions, [the ILEC] can hold its competitors hostage to its own response time, hours of operation, and ability (or incentive) to provide accurate information" and .... "the ILEC will try to pass its own inflated costs though to the CLECs."[20]

Petitioners seem to believe that they are entitled to have ILECs build a new network to CLEC specifications and meet CLEC benchmarks. This is simply not the case. A CLEC choosing to make use of an ILEC network must accept the same response time and quality as the ILEC provides to itself.

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[20] Petition at 18 (quoting Affidavit of Adalene (Nene) Spivy on behalf of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. before the New York Public Service Commission, Case No. 97-C-0271 at 6 (filed Apr. 1, 1997)).

B. The detailed standards requested by the Petitioners are unreasonable.

The Petition then goes on to demand that the Commission set specific requirements for all ILECs because two ILECs allegedly have not supplied sufficient information on their internal benchmarks.[21] These standards would include such requirements as: service orders filled within 24 hours; usage billing information provided within 24 hours; service outages tracked and reported every four hours; and faulty service restored within 24 hours.[22]

Although GTE strives to provide its customers with prompt service, it cannot always provision customer orders within 24 hours. In addition, GTE has had few outages and works to restore service in the minimum time possible. However, neither it nor any other ILEC can possibly ensure that all service is restored to either its own or CLECs' customer within 24 hours. Similarly, GTE does not produce billing information for its own use on a 24 hours basis and cannot be expected to do so for CLECs.

Thus, not only do Petitioners ignore the fact that each ILEC has different systems and internal standards, they are asking the Commission to set standards that are completely unrealistic and that no ILEC could possibly meet. Petitioners have failed to convince state commissions to adopt these unreasonable demands. Now, instead of trying to develop reasonable benchmarks, they are trying to persuade the Commission

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[21] Petition at 7-8.

[22] Petition at 8-9.

to preempt these state decisions and adopt the unrealistic standards several state commissions have already rejected.

C. Petitioners' proposal for interim solutions is irrational and wasteful.

In their rulemaking request, Petitioners first explain the difficulties involved in establishing an OSS interface through which ILEC and CLEC systems can interact.[23] Then, they state that:

> [A]n ILEC's OSS interface "should be deemed satisfactory only if these conditions are satisfied ... wherever an industry standard does not yet exist, the BOC must (a) enter into a binding contractual commitment (backed up by adequate contractual and regulatory penalties) to comply with industry standards as soon as possible (pursuant to a specified implementation schedule) and (b) offer and implement an interim solution that gives requesting carriers the same level of access that the BOC's operational groups have to its systems."[24]

In addition, Petitioners state that "[t]he ILEC also should meet CLEC requirements and provide real-time application-to-application electronic access to telephone number reservation, due date reservation," and other services.[25] In effect, Petitioners are proposing that ILECs develop an interim interface for each CLEC until industry standards are completed. Such an undertaking would be difficult and wasteful.

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[23] Petition at 17-18.

[24] Petition at 22 (quoting Direct Testimony of Ronald Martinez on behalf of MCI Telecommunications Corporation before the Georgia Public Service Commission, Docket No. 6863-U at 10-11 (filed Feb. 14, 1997)).

[25] Petition at 9.

ILECs are not required to develop specialized interfaces to satisfy CLEC desires for custom-designed access. Developing an interface for each CLEC would be impossible to accomplish because of the number of CLECs entering each market and the fact that each CLEC's systems are different, as are each ILEC's. By the time individual CLEC/ILEC interfaces were completed, if that were even possible, industry standards would be adopted, making the interim interfaces obsolete and significant investments of time and money worthless.

In any event, GTE already meets the requirements of the Act for nondiscriminatory access to OSS functions through use of its electronic gateways and systems. GTE agrees that industry standards would facilitate competition, and it has invested significant resources in industry standards bodies. However, until such standards are completed and implemented, CLECs are only entitled to nondiscriminatory access, not CLEC-specific interim interfaces.

IV. THE PETITION COMPLETELY IGNORES COST RECOVERY ISSUES.

Although both the Act and the Commission's Interconnection Order make clear that CLECs must pay the costs they impose on ILECs, the Petitioners' position seems to be that ILECs should absorb the costs of building new systems to accommodate CLECs. However, as detailed in GTE's filings in the Commission's U S WEST ICAM proceeding, forcing ILECs to absorb these costs would be contrary to Congressional and Commission intent, would violate the Takings Clause of the Constitution, and would leave ILECs unable to compete in the marketplace.[26]

A. CLECs are responsible for the costs they impose on ILECs.

Section 252(d) of the Act states that charges for interconnection and UNEs should be "based on the cost ...*of providing* the interconnection or network element," and "may include a reasonable profit."[27] Thus, the literal language of the Act clearly states that a CLEC will pay all of the ILEC's costs, including the costs the ILEC must incur to fill the CLEC's orders for interconnection and UNEs.

This language is confirmed by the legislative history of the Act. The House Report on H.R. 1555 (the House Telecom Reform bill) explained that questions of economic reasonableness should not be considered in determining technical feasibility in the predecessor provision to Section 252(d) because ILECs are entitled to recover all costs caused by the requesting party:

> During the Committee's consideration of the bill, the Committee deleted a requirement that unbundling be done on an "economically reasonable" basis out of concern that this requirement could result in certain unbundled services, elements, features, functions, and capabilities not being made available. The Committee clarified, however ... that the beneficiary of unbundling must pay its cost.[28]

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[26] Comments of GTE Service Corporation, CC Docket No. 97-90, CCB/CPD 97-12 (filed Apr. 3, 1997); Reply of GTE Service Corporation, CC Docket No. 97-90, CCB/CPD 97-12 (filed Apr. 28, 1997).

[27] 47 U.S.C. § 252(d)(1)(A)-(B) (emphasis added).

[28] H.R. Rep. No. 104-204, (1996), *reprinted in* 1996 U.S.C.C.A.N. 10, 36.

This requirement was carried over into the bill as passed.

There is further confirmation to be found in other provisions of the Act where Congress delineated compensation mechanisms. For example, in contrast to the general cost recovery scheme in Section 252, Congress expressly provided that for number portability "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[29] Obviously, when costs were to be borne by all carriers, Congress knew how to state this explicitly.[30]

The Commission itself has affirmed this interpretation in its First Interconnection Order.[31] Specifically, the Commission expressly stated that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable

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[29] 47 U.S.C. § 251(e)(2). However, GTE does not agree that forcing ILECs to absorb 100 percent of these costs qualifies as competitively neutral.

[30] *See, e.g., Brown v. Gardner*, 115 S. Ct. 552, 556 (1994) (quoting *Rusello v. United States*, 464 U.S. 16, 23 (internal marks omitted) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."); *Railway Labor Executives' Ass'n v. National Mediation Board*, 29 F.3d 655, 666 (D.C. Cir. 1994) (*en banc*), *cert. denied*, 115 S. Ct. 1392 (1995) ("The fact that Congress omitted equivalent language . . . cannot be deemed unintentional or immaterial.").

[31] Although GTE believes that the Commission was correct in its determination that ILECs are entitled to recover their costs, GTE disagrees with the cost methodology adopted by the Commission. It has challenged this methodology before the Eighth Circuit (Brief for Petitioners Regional Bell Companies and GTE, *Iowa Utilities Board, et al. v. FCC*, No. 96-3321 (8th Cir. consolidated Sept. 11, 1996)).

profit."[32] It further observed that: "if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, ... [t]he requesting carrier would ... bear the cost of compensating the incumbent LEC for such conditioning."[33]

The Commission has similarly affirmed that CLECs must pay the costs they impose in other numerous instances, including unbundling of integrated digital line delivered loops,[34] cross-connect facilities,[35] unbranding or rebranding operator services and directory assistance,[36] and higher quality interconnection or unbundled network elements than an ILEC provides to itself.[37] The agency's construction of the Act ensures that ILECs have the right to recover the costs of providing service – a long-standing FCC policy that was firmly in place even before passage of the Act.[38]

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[32] *First Interconnection Order* at 15603.

[33] *Id.* at 15692 (footnotes omitted).

[34] *Id.* at 15693.

[35] *Id.*

[36] *Id.* at 15979.

[37] *See First Interconnection Order* at 15615 (interconnection), and at 15659 (unbundled elements).

[38] *See, e.g., Accounting for Judgments and Other Costs Associated with Litigation*, CC Docket No. 93-240, FCC 97-80, ¶ 2 (rel. Mar. 13, 1997) (stating that "[c]arriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. This fundamental requirement is unchanged by the Telecommunications Act of 1996.") Consistent with policy, the Commission required compensation when an ILEC incurred expenses so that another carrier could interconnect. *See Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, *modified*, 8 FCC Rcd 127 (1992), *vacated on other grounds, Bell*

(Continued...)

B. If the costs of providing CLECs access to OSSs are not recoverable, ILECs will suffer an unconstitutional taking and be unable to compete in the marketplace.

Not allowing ILECs to recover the costs of providing CLECs with access to OSSs would result in a taking of private property for public use without just compensation.[39] Congress has determined that CLECs must be given access to ILECs' networks in order to provide competition in the local market that will benefit all consumers. However, the Act requires ILECs to expend significant sums to provide the new services and access necessary for this competition.

The cost of interconnection includes not only cables and switches, but also modifications to or creation of the "back office" systems used to provision and bill the new "services." Unlike requirements which will benefit the public as a whole, such as number portability, the modifications necessary for CLECs to use ILEC networks will only benefit CLEC customers. Therefore, these costs should be spread among those benefiting, not charged to the ILEC's other customers.

If ILECs are forced to absorb these costs, as Petitioners seem to advocate, they will be unable to compete. ILECs will be forced to pass these costs on to their customers by raising prices where permitted by state regulators. Thus, ILEC customers will be funding CLEC entry into the market. This will, in turn, encourage more

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(...Continued)
Atlantic Tel. Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994)(requiring ILECs to file tariffs for charges designed to compensate the ILECs for services offered to interconnectors).

[39] *See* U.S. Const. amend. V.

customers to migrate to CLECs and leave ILECs with an even smaller base of customers over which to spread these costs.

No CLEC is required to use ILEC facilities to provide local service. CLECs are free to build their own networks, use part of the ILEC network, or resell ILEC services. Therefore, any costs ILECs incur to provide CLECs with the services or elements they need should be fully recoverable from the CLECs alone. This outcome will ensure that CLECs provide competitive services in the most cost-efficient manner – they will use ILEC elements and services only when they are less expensive than building such elements themselves. If CLECs could use the ILEC network without paying the costs associated with that use, there would be no facilities-based competition because it will always be less expensive from the CLEC perspective to have the ILECs pay all of the entry costs.

V. CONCLUSION

OSS issues are complex because each ILEC has different legacy systems and different capabilities. Similarly, CLECs have distinct needs, business plans, and levels of technical sophistication. As a result, state commissions are in the best position to examine OSS issues arising from interconnection agreements because they are the most familiar with ILECs' systems and CLECs' needs.

Industry standards bodies are also studying these issues in order to develop common national standards. Although significant progress has been made, this is a complex and lengthy process requiring substantial work from all segments of the industry. Rather than preempting these ongoing efforts, the Commission should allow them to reach fruition. In so doing, the agency would avoid becoming entangled in this process and further complicating the development of industry standards and the implementation of interim solutions.

Respectfully submitted,

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July 10, 1997

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